IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

WRIT PETITION NO.2816 OF 2002

Shri Babubhai Koli. ...Petitioner.
Vs.
Municipal Corporation for Greater Mumbai & Ors. ...Respondents.
....
Mr. C. J. Sawant, Senior Advocate with Mr. Vijay Patili/b. Uma Palsule-Desai for the Petitioner.
Mrs.Meena Doshi with Mrs. V.K. Khatu for Respondent Nos.1 and 2.
Mr. M.D. Naik, AGP for Respondent Nos.3 and 4
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CORAM : A.P. SHAH AND
DR.D.Y.CHANDRACHUD, JJ.

July 22, 2005.

ORAL ORDER (PER DR. D.Y. CHANDRACHUD, J.):

The Municipal Corporation has directed that the hoardings belonging to the Petitioner are liable to be removed on the ground that they fall in the category of CRZ-I in the notification dated 19th February 1991 issued by the Central Government in exercise of powers conferred by the Environment Protection Act, 1986. CRZ-I is defined in the following terms in the said notification:

"**Category I (CRZ-I)**:

> -(i) Areas that are ecologically sensitive and important, such as national parks/marine parks, sanctuaries, reserve forests, wildlife habitats, mangroves, corals/coral reefs, areas close to breeding and spawning grounds of fish and other marine life, areas of outstanding natural beauty/historically/heritage areas, areas rich in genetic diversity, areas likely to be inundated due to rise in sea level consequent upon global warming and such other areas as may be declared by the Central Government or the concerned authorities at the State/Union Territory level from time to time.
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> Area between Low Tide Line and the High Tide Line."

2. The Expert Committee that was appointed by this Court on 2nd May 2003, submitted its report in July 2003 and after due verification has come to the conclusion that the hoardings which form the subject matter of this petition are liable to be removed. The report of the Committee covered several hoardings, a majority of which were stated to be located around Mahim Causeway and the Mithi river estuary. The Committee has in its report stated that the hoardings are situated on foreshore land on the southern edge of Mahim Creek just before it travels beneath General A. K. Vaidya Marg. The Committee was of the view that the hoardings have been erected on land reclaimed from the creek by dumping and that they fall in CRZ-I. Photographs are annexed to the report of

the Committee.

3. We are of the view, having heard Counsel appearing on behalf of the Petitioner that the reasons on the basis of which the Committee concluded that the hoardings fall in CRZ-I are sustainable and correct. Counsel appearing on behalf of the Petitioner is unable to impugn the correctness of the finding of the Committee that the hoardings in question, are situated in a CRZ-I area. In a CRZ-I area no construction is permissible within 500 meters of High Tide Line or between the High Tide Line and Low Tide Line. The Municipal Corporation has concurred with the report of the Expert Committee.

4. In fact, the pleadings of the Petitioners themselves are sufficient to warrant a dismissal of this petition. In para 11(b) of the petition, the Petitioners have averred as follows:

> "(b) It appears that the water body on the basis of which the Petitioner has been given notices that the hoardings of the Petitioner are in violation of the CRZ Notification is described as Mithi River by the MMRDA which is a Special Planning Authority for the said area in question, in its final Development Plan, which has been approved by the State Government sometime in the year 1991. The Mithi River is in the form of a channel which is black in colour and highly polluted. It would therefore, be a

> travesty to allege that there is a violation of the CRZ. The Petitioner's hoarding site is not in the Mahim Creek and, therefore, there is no violation of the CRZ Notification dated 19-2-1991."

The contention of the Petitioner that Mithi River is not a river but a polluted channel is only to be stated to be rejected. We would wish to record that the only dispute which has been raised before the Court in the course of the submission is in regard to the location of the hoardings. The Petitioners have no vested right in the continuance of the hoarding structure. Public interest in the conservation of the environment must prevail. That is in fact the mandate of the notification issued on 19th February 1991 under the Environment Protection Act, 1986.

5. There is no merit in the petition which is accordingly dismissed. However, in order to enable the Petitioner to have recourse to the remedies against this judgment and order, there shall be a direction that the hoardings shall not be liable to be removed until 15th October 2005.

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